

REMARKS

Forty-two claims were originally filed in the present Application. Claims 1-10, 12-30, and 32-42 currently stand rejected. Claims 11 and 31 are objected to, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 1, 7, 11, 21, 27, 31, 41, and 42 are amended herein. In addition, please note that a Change of Correspondence Address has been enclosed with the present Response to Office Action. Reconsideration of the Application in view of the foregoing amendments and the following remarks is respectfully requested.

Rejection under 35 U.S.C. §112, Second Paragraph

In paragraph 2 of the Office Action, the Examiner indicates that claims 1-42 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner states that, in claims 1, 21, 41, and 42, certain terms “are indefinite because it is not made specifically clear where the request originated from.”

Accordingly, Applicants herein amend claims 1, 21, 41, and 42 to recite “a scheduling request from device software” to thereby indicate the source of the foregoing request. In view of the foregoing remarks and amendments, Applicants believe that the Examiner’s rejection is addressed, and respectfully request that the rejection under 35 U.S.C. §112, second paragraph be withdrawn so that claims 1-42 may issue in a timely manner.

35 U.S.C. § 103(a)

In paragraph 3 of the Office Action, the Examiner rejects claims 1-9, 12-29, and 32-42 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. US2004/0040025A1 to Lehtinen (hereafter Lehtinen). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Applicants submit that Lehtinen fails to teach a substantial number of the claimed elements of the present invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

In contrast to Applicants' claimed invention, Lehtinen teaches a wireless communication system that selects a next "application session" or a next "activity block" "on the basis of a current "resource allocation situation" (see page 2, paragraphs 10-15). With regard to claim 1, the Examiner states that "Lehtinen

fails to explicitly teach that the parameters of the request are being analyzed.” Applicants’ concur. However, without providing any additional references in support of the rejection, the Examiner then cursorily concludes that “[i]t would have been obvious . . . that the resource allocation situation would have parameters”

In the rejections of claims 1-4, 8, 14, 21-24, 28, 34, and 41-42, the Examiner repeatedly concedes *in seven different instances* that Lehtinen fails to teach various limitations claimed by Applicants. The Examiner repeatedly states that the foregoing various limitations “would have been obvious” without providing any references for support.

It appears that the Examiner is extensively utilizing Official Notice without expressly stating so. Applicants respectfully traverse the Examiner’s view that the foregoing limitations would have been obvious to one skilled in the art at the time of the invention. Applicants therefore respectfully request the Examiner to cite specific references in support of these rejections, and failing to do so, to reconsider and withdraw the rejections of claims 1-4, 8, 14, 21-24, 28, 34, and 41-42, so that the present Application may issue in a timely manner.

Furthermore, the Court of Appeals for the Federal Circuit has held that “obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination.” In re Geiger, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987). Applicants submit that there is no teaching of a

combination that would result in Applicant's invention, and therefore the obviousness rejection under 35 U.S.C §103 is not proper.

Applicants submit that the cited references, in combination with the Official Notice, do not suggest a combination that would result in Applicants' invention, and therefore the obviousness rejections under 35 U.S.C §103 are improper. Applicants therefore respectfully request the Examiner to cite references in support of the Official Notice, and to also indicate where an explicit teaching to combine the cited reference may be found. Alternately, the Applicants request that the Examiner reconsider and withdraw the rejections of claims 1-4, 8, 14, 21-24, 28, 34, and 41-42 under 35 U.S.C §103.

With regard to claim 42, "means-plus-function" language is utilized to recite elements and functionality similar to those recited in claims 1 and 21 which are further discussed above. Applicants therefore incorporate those remarks by reference with regard to claim 42. In addition, the Courts have frequently held that "means-plus-function" language, such as that of claim 42, should be construed in light of the Specification. More specifically, means-plus-function claim elements should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof. Applicants respectfully submit that, in light of the substantial differences between the teachings of Lehtinen and Applicants' invention as disclosed in the Specification, claim 42 is therefore not anticipated or made obvious by the teachings of Lehtinen.

Regarding the Examiner's rejection of dependent claims 2-9, 12-20, 22-29, and 32-40, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 2-9, 12-20, 22-29, and 32-40, so that these claims may issue in a timely manner.

In addition, Applicants submit that Lehtinen nowhere teaches "request parameters" that include either "a resource requirement" or "an execution interval for performing said task", as recited in dependent claims 6 and 26. Furthermore, Applicants submit that Lehtinen fails to disclose a "scheduling priority level being *inversely proportional* to said execution interval" as recited in dependent claims 14 and 34. Finally, Applicants submit that Lehtinen nowhere teaches "*terminating said task* when an allocated-resource limit is reached" as recited in dependent claims 18 and 38.

For at least the foregoing reasons, the Applicants submit that claims 1-9, 12-29, and 32-42 are not unpatentable under 35 U.S.C. § 103 over Lehtinen, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 1-9, 12-29, and 32-42 under 35 U.S.C. § 103.

In paragraph 25 of the Office Action, the Examiner rejects claim 10 and 30 under 35 U.S.C. § 103(a) as being unpatentable over Lehtinen in view of U.S. Patent No. 5,274,684 to Pearson (hereafter Pearson). The Applicant respectfully traverses these rejections for at least the following reasons.

Applicant maintains that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. § 103(a), the prior art references when combined must teach or suggest all the claim limitations." The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Applicants respectfully traverse the Examiner's assertion that modification of the device of Lehtinen according to the teachings of Pearson would produce the claimed invention. Applicants submit that Lehtinen in combination with Pearson fail to teach a number of the claimed elements of the present invention. Furthermore, Applicants also submit that neither Lehtinen nor Pearson contain teachings for combining the cited references to produce the Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

With regard to claims 10 and 30, the Examiner concedes that Lehtinen "fails to explicitly teach wherein said allocation manager analyzes said execution interval" Applicants concur. The Examiner then points to Pearson to purportedly remedy these defects. Applicants respectfully disagree with the Examiner's interpretation of Pearson.

As cited by the Examiner in support of the foregoing rejections of Applicants' claimed "symmetrical execution-interval specification requirement" in claims 10 and 30, Pearson only teaches an "I/O processor" that includes "a CLOCK signal defined to be a symmetrical clock signal" (column 6, lines 25-26). Applicants respectfully submit a "clock signal" is not the same thing as a symmetrical "execution interval" corresponding to a given task. Applicants submit that Pearson nowhere discusses an "execution interval" for performing a given task, and therefore never discloses any type of requirement that such execution interval be "symmetrical", as claimed by Applicants.

For at least the foregoing reasons, the Applicants submit that claims 10 and 30 are not unpatentable under 35 U.S.C. § 103 over Lehtinen in view of Pearson, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 10 and 30 under 35 U.S.C. § 103.

Allowable Subject Matter

In paragraph 27, the Examiner indicates that claims 11 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants therefore amend claims 11 and 31 in independent form including all of the limitations of the base claim and any intervening claims, to thereby place claims 11 and 31 in condition for immediate allowance.

Examiner Interview Summary

On June 2, 2004, Applicants' representative, Gregory Koerner, held an Examiner's Interview with Examiner Kevin Tang to discuss various differences between the cited references and Applicants' claimed invention. Applicants argued that Lehtinen nowhere teaches "request parameters" that include either "a resource requirement" or "an execution interval for performing said task", as recited in dependent claims 6 and 26. Furthermore, Applicants argued that Lehtinen fails to disclose a "scheduling priority level being *inversely proportional* to said execution interval" as recited in dependent claims 14 and 34. Finally, Applicants argued that Lehtinen nowhere teaches "*terminating said task* when an allocated-resource limit is reached" as recited in dependent claims 18 and 38. In addition, Applicants argued that Pearson nowhere discusses an "execution interval" for performing a given task, and therefore never discloses any type of requirement that such execution interval be "symmetrical", as claimed by Applicants.

Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections under 35 U.S.C. §103(a). Because the cited references, or the Examiner's citations thereto, do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-42 so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,

Date: 6/2/04

By: 

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